

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**JP MORGAN CHASE BANK NA,
Plaintiff,**

v.

Case No. 11-CV-00800

**KENNETH KRAEMER, and
NISARAT KRAEMER
Defendants.**

DECISION AND ORDER

On February 24, 2011, plaintiff JP Morgan Chase Bank NA filed an action for foreclosure on a mortgage against defendants Kenneth and Nisarath Kraemer in the Circuit Court of Milwaukee County. On April 4, 2011, defendants, appearing pro se, filed an answer and affirmative defenses/counterclaims alleging that plaintiff had violated the Real Estate Settlement Procedure Act, 12 U.S.C. § 2601, et seq., the Home Ownership Equity Protection Act, 15 U.S.C. § 1639, et seq., and the Fair Debt Collection Practices Act, 15 U.S.C. § 1601, et seq. On August 24, 2011, defendants removed the case. Before me now is plaintiff's motion to remand the case to state court.

Defendants assert that removal is proper because this court has jurisdiction on the basis of both federal question jurisdiction under 28 U.S.C. § 1331 and diversity jurisdiction under 28 U.S.C. § 1332. However, defendants cannot remove the case based on federal question jurisdiction. A defendant can only remove a case to federal court if the plaintiff's complaint raises a federal question. Merrell Dow Pharmaceuticals Inc. v. Thompson, 478 U.S. 804, 808 (1986). Here, only defendants' counterclaims raise federal questions.

Second, as to defendant's removal based on diversity, a defendant cannot remove a case if any defendant is a citizen of the state in which the action was originally brought. 28 U.S.C. § 1441(b). The present action was brought in Wisconsin, and both defendants are Wisconsin citizens. Therefore, the removal based on diversity is improper.

Since I conclude that I lack jurisdiction, I need not decide whether defendants' notice of removal was timely under 28 U.S.C. § 1446(b). I must remand this case to state court regardless.

THEREFORE, IT IS ORDERED that plaintiff's motion to remand [Docket # 9] is **GRANTED**. This case is **REMANDED** to the Circuit Court of Milwaukee County.

Dated at Milwaukee, Wisconsin, this 28th day of November 2011.

s/_____
LYNN ADELMAN
District Judge